AGREEMENT FOR AFFORDABLE HOUSING
DUPLEX RENTAL ASSISTANCE DEMONSTRATION CONVERSION

THIS AGREEMENT FOR AFFORDABLE HOUSING (hereinafter the "Agreement") is made and entered into this 4th day of April, 2017 by and between the **CITY OF BRIGHTON, COLORADO,** a home rule municipality of the County of Adams, State of Colorado (hereinafter called the **"City"**), and **BRIGHTON HOUSING AUTHORITY**, a Colorado Governmental Agency with a Special Purpose (collectively hereinafter, **"Developer").**

RECITALS

WHEREAS, the Developer, has converted existing duplex units on Jessup Street, North 5th , Avenue and South 18th Avenue, described in Exhibit A attached hereto and incorporated herein by this reference (the "Properties"); and

WHEREAS, the Developer desires and intends to convert many existing Brighton Housing Authority multi-family units to more units generally known as "Duplex Rental Assistance Demonstration Conversion"; and

WHEREAS, the Developer is requesting that the City reduce, reimburse, or otherwise subsidize the City's customary Development Impact Fees and Use Taxes (collectively hereinafter, "Fees") in connection with the Project and for the benefit of Developer; and

WHEREAS, the Developer warrants and represents that sixteen (16) existing units of affordable housing are being converted to thirty-two (32) affordable housing units ("Project Unit(s)" or "Unit(s)"), which shall be affordable to income qualifying residents of Brighton who earn 50% less than the Denver metropolitan area median household income; and

WHEREAS, the Developer acknowledges and represents that the Project has been reviewed by and is subject to the rules, regulations, restrictions, conditions and oversight of the Colorado Housing and Finance Authority ("CHFA"); and

WHEREAS, on March 7, 2017, and pursuant to the requirements of Section 3-5-50 of the *Brighton Municipal Code* (the "Code"), the Developer submitted to the City that certain *Application for Affordable Assistance*, requesting a reduction, reimbursement or other subsidy of such Fees for the benefit of Developer of the Project (the "Application"); and

WHEREAS, in response to the Application, on April 4, 2017, the City Council adopted Resolution No. (2017-43), attached hereto as **Exhibit C** and incorporated herein by reference (the "Fee Resolution"), which provides that certain of such Fees are thereby made eligible for reduction, reimbursement or subsidy for the benefit of the Developer in connection with the Project, and which sets forth particular percentages of such Fees that are payable by Developer in connection therewith; and

WHEREAS, the Fee Resolution also requires that any such Fee reduction(s), reimbursement(s), or other subsidy for the Project shall be reduced to a written agreement (this "Agreement") by and between all Owners and Developers of the Property or Project and the City, and that the terms and provisions of such Agreement shall run with the land and be binding upon the Property and Project for so long as such Agreement remains in effect; and

WHEREAS, this Agreement shall bind the Developer and its heirs, successors or assigns, and the Developer guarantees the faithful performance of the terms and conditions hereof, including but not

limited to the income eligibility criteria and other pertinent development conditions and requirements of the City; and

WHEREAS, if the Developer or its heirs, successors or assigns do not faithfully perform or satisfy any term or condition of this Agreement, then the Developer acknowledges that the City Council may summarily revoke the Fee Resolution and the grant(s) and benefits contained therein and in this Agreement, and Developer agrees that it shall thereupon be required to repay, as provided herein, the full amount of Fees which customarily would have applied to the Project or would otherwise have been imposed and collected by the City, but for the reductions or subsidies granted herein and in the Fee Resolution; and

WHEREAS, in consideration of the City's reduction in Fees for the Project, the Developer agrees that it shall provide affordable housing Units within the Project, pursuant to and in accordance with the terms and provisions of the Fee Resolution and Article 3-5-70 of the Code, and subject to the terms and provisions of this Agreement; and

WHEREAS, consistent with Code Section 3-5-70, the Fee Resolution, and the Application, the Parties desire to set forth herein their agreements, understandings, covenants, terms, conditions and promises, in order to guarantee the Developer's performance and satisfaction of income eligibility criteria and other pertinent development conditions regarding the Fee reduction(s) the Project; and

WHEREAS, the City Council has determined that the public interest and convenience require the execution of this Agreement in order to obtain the Developer's commitment to construct and maintain the affordable housing described herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a substantive and enforceable part of this Agreement, and in consideration of the representations, warranties, understandings, covenants, promises and conditions set forth herein, together with other good and sufficient consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RATIFICATION OF APPLICATION. The Developer hereby acknowledges, ratifies and restates the representations and statements set forth by the Developer in the Application submitted to the City on March 7, 2017.

2. DEVELOPER'S OBLIGATIONS. For a period of at least forty (40) years from the date of issuance of the first certificate of occupancy for all or any portion of the Project, the Developer shall:

   A. Provide Units within the Project to income-qualified tenants at reduced lease rates according to the percentages for designated Area Median Incomes ("AMI") as more particularly described in **Exhibit B** attached hereto and by this reference made a part hereof. "Income qualified tenant(s)" are those persons whose household income is not more than fifty percent (50%) of the Denver metropolitan area average median income, based upon the most recent applicable CHFA guidelines, and taking into consideration the "Available Unit Rule" (see paragraph 3 hereof). The Developer acknowledges that such reduced rental rates are available for the Project in the percentages indicated and are otherwise attributable, in whole or in part, to the reduction(s) of Fees by the City in the Fee Resolution. The Developer represents and warrants that the Developer shall in good faith pass the benefit of such reduced Fees

through to such income-qualified tenant(s) of the Project, in order to reduce the rental rate for all Units within the Project.

B. Provide or otherwise make available to income-qualified tenants, in accordance with **Exhibit B**, sixteen (16) additional units, that shall be continuously offered for lease to such income-qualified tenants during the term of this Agreement, and at appropriate rental rates that are affordable to such tenants pursuant to the percentages set forth in **Exhibit B**.

C. Provide to the City annually, on or before January 31st of each and every year, a written leasing compliance certification demonstrating Developer's full compliance with the income qualifying provisions of this Agreement for the prior year, and otherwise warranting, representing and establishing to the City that the Developer is meeting the letter and spirit of this Agreement in all respects. The City will accept CHFA Long Form G-2 to satisfy the requirements herein. In conjunction therewith, the Developer shall make available to the City, upon reasonable prior notice, for inspection and audit, the books and other records relied upon by Developer to prepare the rental compliance certification. The Developer shall also provide to the City a copy of the annual CHFA audit of the Project.

D. In consideration of such Fee reductions, the Developer agrees to faithfully perform the terms and provisions of this Agreement, and in the event of default by Developer, agrees to repay to the City all such Fees that have been reduced herein, in the Fee Resolution, or otherwise in connection with the Project, as more particularly set forth below.

3. DEFAULT. Any one of the following shall constitute an event of default under this Agreement:

A. Failure of the Developer to fully and faithfully perform in good faith any term or provision in this Agreement.

B. A voluntary or involuntary sale, assignment, conveyance or other transfer of ownership or interest in the Owner, Developer, Project or Property, to a person or entity not a party to this Agreement, without the written consent of the City. In the event of such proposed transfer, the City agrees not to unreasonably withhold its consent, provided that the Developer and its successor, assign, or other transferee expressly agrees in writing to be bound by the terms and provisions of this Agreement in all respects.

C. Conversion of the Project or Unit(s) from income qualifying rental housing as provided herein and in the Fee Resolution and Application, to any other use or income qualifying structure not contemplated herein or not within the purview of this Agreement.

D. Otherwise, default for purposes of this Agreement shall be defined as the date upon which a Unit, Units, or the Property or Project, in whole or in part, ceases to be occupied by an income qualified tenant at the applicable reduced rental rate in the percentages as provided herein, except in the case of normal Unit vacancy or turnover; or the date upon which a Unit, Units, or the Property or Project, in whole or in part, was first occupied by a non-income qualified tenant; or the date of sale or

transfer of a Unit, Units, or the Property or Project, in whole or in part, to a person or entity that does not expressly agree in writing to honor the terms and provisions of this Agreement. If the Project is never occupied by an income qualified tenant as provided herein, then the date of default shall be the date of issuance of the first certificate of occupancy for a Unit, Units, or the Property or Project, in whole or in part.

NOTE: The parties hereto understand and agree that the above default provisions are subject to the "Available Unit Rule" found at Section 3.13 of the CHFA Regulations (26 CFR Part 1, Federal Register Vol. 62, No. 187, Friday, September 26, 1997, Page 50503).

4. DAMAGES UPON DEFAULT. The City shall have forty-five (45) days to review the annual written rental compliance certification provided for in paragraph 2.C. above. The City shall give written notice to the Developer of each and every incident of default represented in said compliance certification or other incident of default discovered by the City and not included in the compliance certification. The Developer shall have six (6) months from the date of the notice to cure the default(s). If said default(s) is not timely cured, the Developer agrees and shall pay to the City the sum of Three Thousand Dollars ($3,000.00) for each incident of default, representing repayment of a pro rata portion of the Fee reductions provided by the City. Said default payment shall be paid to the City no later than thirty (30) days from the expiration of the six month cure period.

If said payment is not timely paid by the Developer, the City shall have the option, at its sole discretion, to summarily revoke the Fee Resolution and the grant(s) and benefits contained therein and in this Agreement, and Developer agrees to repay the full amount of Fees which customarily would have applied to the Project or would otherwise have been imposed and collected by the City, but for the reductions and subsidies granted herein and in the Fee Resolution, together with interest thereon from the date of default at 12% per annum.

The City and Developer agree and represent that the above-referenced damage provisions are liquidated damages only and are not a penalty, and that the same are not unreasonable or objectionable under the circumstances of this Agreement.

5. STATUS OF DEVELOPER. The Developer shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. Except to such limited extent as may be provided in any standard Development Agreement by and between the City and the Developer, the Developer shall not be supervised or controlled by any employee or official of the City with respect to the Project, nor will the Developer exercise supervision over any employee or official of the City. The Developer shall not represent that Developer is an employee or agent of the City in any capacity. The Developer shall supply all personnel, buildings, equipment and materials for the Project at Developer's sole expense. This Agreement shall not establish a joint venture between the City and Developer. The Developer is not entitled to City worker's compensation benefits and is obligated to pay federal and state income tax on income earned pursuant to this Agreement, if applicable.

6. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and deemed received upon delivery, if delivered

personally, or upon depositing in the U.S. Mail, postage prepaid and addressed to the proper Party as follows:

City of Brighton:

City Manager
500 South 4th Avenue
Brighton, Colorado 80601

Developer:

Brighton Housing Authority
Joseph Espinosa
22 South 4th Avenue
Brighton, CO 80601

cc: City Attorney
500 South 4th Avenue
Brighton, CO 80601

7. ASSIGNMENT. Neither the City, nor the Owner nor the Developer shall assign or transfer any interest in this Agreement without the prior written consent of the other Party or Parties.

8. PROVISIONS CONSRUCTED AS TO FAIR MEANING. The provisions of this Agreement shall be construed as to their fair meaning and not for or against any Party based upon any attribution to such Party as to the source of the language in question.

9. HEADINGS FOR CONVENIENCE. All headings, captions and titles are for convenience and reference only and are of no meaning in the interpretation or effect of this Agreement.

10. COMPLIANCE WITH ORDINANCES AND REGULATIONS. The Developer shall perform all obligations under this Agreement in strict compliance with all federal, state, and City laws, rules, statutes, charter provisions, ordinances, resolutions, and regulations applicable to the performance of Developer's obligations under this Agreement.

11. NO THIRD PARTY BENEFICIARIES. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Other than the Parties hereto, any person receiving services or benefits under this Agreement shall be only an incidental beneficiary.

12. FINANCIAL OBLIGATIONS OF CITY. All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit, or a payment guarantee by the City to the Developer.

13. INTEGRATED AGREEMENT AND AMENDMENTS. Subject to the terms and provisions of any standard Development Agreement by and between the City and Developer for the Project or any portion thereof, this Agreement is an integration of the entire understanding of the Parties with respect to the matters set forth herein. The Parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

14. WAIVER. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

15. SEVERABILITY. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.

16. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of the Colorado.

17. BINDING EFFECT. This Agreement shall be binding upon the Parties and their respective successors and assigns in all respects.

18. AGREEMENT AS COVENANT. This Agreement, and all of its obligations, shall run with the land and be a covenant with respect thereto, and shall be binding upon the Parties, their respective heirs, successors, transferees and assigns. The City shall record this Agreement with the Adams County Clerk and Recorder.

19. ATTORNEY FEES AND COSTS. Should the City take legal action to enforce the provisions of this Agreement or otherwise address Developer's default hereunder, the City shall be entitled to recover its reasonable attorney fees, costs, expert witness and other fees.

20. AUTHORITY TO EXECUTE THIS AGREEMENT. By their signatures below, the undersigned officers and officials of the Parties warrant and represent that they are fully authorized and empowered to execute this Agreement for and on behalf of their respective principals, the Parties, and in doing so, further warrant and represent that they have authority to bind the Parties to this Agreement in all respects.

The Parties execute this Agreement this 4th day of April, 2017.

CITY OF BRIGHTON, COLORADO
A Home Rule Municipality

By: _____
Richard N. McLean, Mayor

DEVELOPER:
BRIGHTON HOUSING AUTHORITY
A Colorado Governmental Agency with a Special Purpose

By: _____
Joseph Espinosa, Executive Director

ATTEST:

By: _____
Natalie Hoel, City Clerk

ATTEST:

By: _____
, Title:

APPROVED AS TO FORM:

By: _____
Margaret R. Brubaker, Esq.
City of Brighton Attorney

Exhibit A

Legal Description

539 Jessup Street
East 90 feet of Lots 17 through 20 and all Lots 21 through 24 of Block 2, together with the vacated alley lying between Storm Drainage Lots and together with West 10' of vacated 6th Avenue adjacent to Lots 21 through 24 on East of Jessups Addition

301 N. 5th Avenue
Lots 24-30, Block 7, Central Addition To Brighton

55 S. 18th Avenue
South Half of Lot 14 and all of Lots 15 and 16, together with a 10 foot strip of vacated 18th Avenue of East Brighton Subdivision

75 S. 18th Avenue
All of Lots 17 and 18 and North Half of Lot 19, together with a 10 foot strip of vacated 18th Avenue of East Brighton Subdivision

Exhibit B

Application for Affordable Housing Assistance (Following 3 pages)

CITY OF BRIGHTON
COMMUNITY DEVELOPMENT DEPARTMENT

Name of Development: Duplex RAD Conversion
Name of Applicant: Brighton Housing Authority
Name & Address of each property owner, subdivider and/or developer:

Jessup Property
Existing Upper Level Units = 541,543,561,563,581,583 East Jessup Brighton CO
Proposed Lower Level Units = 539,545,559,565,579,585 East Jessup Brighton CO
North 5th Property
Existing Upper Level Units = 301,303, 315,317,327,329 N. 5th St. Brighton CO
Proposed Lower Level Units = Not Yet Assigned by COB
South 18th Property
Existing Upper Level Units = 3065, 67, 73, 75 S. 18th St. Brighton CO
Proposed Lower Level Units = Not Yet Assigned by COB

Please list the following information in this form digitally or on a separate sheet of paper.

1. A description of the applicant's project and fee reduction proposal, including the number of units to be occupied by tenants or purchased and occupied by homeowners whose incomes meet the specific percentages of the median income by occupancy type;

   BHA RESPONSE:
   The site currently consist of 16 existing units (8 existing duplex buildings on three scattered sites). The existing project consist of 1- two bedroom unit, 9 – three bedroom units and 6 – four bedroom units. The proposed project will double the density to a total of 32 units (8 four-plex buildings on three scattered sites). The proposed project will consist of 1 two bedroom unit, 19 – three bedroom units and 12– four bedroom units. The project (all 32 units) will be completely owned by the Brighton Housing Authority. Rental supplement for tenants will be supplemented by (2) main sources. (1) The first source is Rental Assistance Demonstration, RAD, Housing Assistance Payments. This source provides rental assistance for eleven of the units. All eleven of these units have households at an Area Median Income (AMI) level of 30% or lower. (2) The second source is Housing Choice Vouchers, HCV, Housing Assistance Payments. The remaining 21 units will accept HCVs. Currently 94% of the participants on the HCV program are below 30% AMI. As a result, the project substantially exceeds the qualifications for the highest level of affordability and fee waivers.
   100% of the units will be occupied by tenants
   0% of the units will be home owners.

2. Whether or not there is a commitment by the applicant to a minimum ten year or longer use period for Affordable Housing (tenant-occupied), or a minimal five-year or longer use period for Affordable Housing (owner-occupied);

   BHA RESPONSE:

BHA will commit to the site meeting a 10 year period for Affordable Housing (tenant-occupied).

3. Whether or not there is a commitment by the applicant to provide a minimum of five percent of the total units to one or more special needs populations including, but not limited to, large-family (three or more bedrooms), homeless, elderly, disabled and agricultural workers;

   BHA RESPONSE:
   BHA has committed to rehabilitating the existing accessible unit to meet currently accessible standards. Also, 97% of the units will be for large families (three and four bedroom units)

4. Whether there is a commitment by the applicant to giving a priority to residents of the City of Brighton who are currently on waiting lists for affordable house;

   BHA RESPONSE:
   BHA has committed to provide priority housing options to the City of Brighton residence who are on the BHA verified waitlist for affordable housing. This commitment is consistent with the existing housing policy of BHA.

5. Whether or not there are construction features of the subject project that lower the cost of housing for low income consumers:

   BHA RESPONSE:
   BHA reduced the construction cost of the proposed (16) units due to the reality that no new construction is required for the housing units. All unit construction is considered rehabilitation and is within the existing building envelope of the existing units. This substantially lowers the construction cost of providing these new units of affordable housing.

6. Whether or not the applicant has diligently applied for, pursued, obtained and received, or has been denied, other fund(s) or subsidies, including State or Federal funds, subsidies, grants, or other financing tools or products. In this regard, all applicants hereunder are required to demonstrate to the City Council that other available funding sources have been diligently pursued.
   BHA RESPONSE:
   BHA has actively and aggressively pursued other funding options for this project. Along with the City of Brighton, Adams County has continuously proven to be a valuable partner is the development of affordable housing. Adams County has committed to provide $400,000 in HOME funds toward the project. Additionally, BHA is committing $445,000 of its own funds in the development of this project. The remaining funding is provided by a double tax except loan (at a reduced interest rate) by Valley Bank & Trust. Total project cost is about $4,100,000.

7. Any other factors consistent with the intent of this Article that may support the application that the Director may deem necessary or pertinent to the subject application, or which are otherwise set forth in an administrative regulation.
BHA RESPONSE:
None

Exhibit C

DRAFT
RESOLUTION NO. 2017-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO TAKING ACTION UPON AN APPLICATION FOR AFFORDABLE HOUSING ASSISTANCE SUBMITTED BY THE BRIGHTON HOUSING AUTHORITY PURSUANT TO SECTIONS 3-5-50, 3-5-60 AND 3-5-70 OF THE *BRIGHTON MUNICIPAL CODE* AND APPROVING THE REDUCTION OR SUBSIDY OF DEVELOPMENT IMPACT FEES AND USE TAX ACCORDINGLY.

WHEREAS, on or about March 7, 2017, and pursuant to the requirements of Sections 3-5-50, 3-50-60 and 3-5-70 of the *Brighton Municipal Code*, the Brighton Housing Authority (the "Applicant") submitted to the City an Application (the "Application") for the Duplex Residential Assistance Demonstration Conversion Project (the "Project"); and

WHEREAS, pursuant to Section 3-5-50 of the *Brighton Municipal Code,* designated City Staff reviewed said Application in conjunction with the City's *Attainable Housing Matrix* and has made a recommendation to the City Council regarding the reduction or subsidy of certain development impact fees and use tax for thirty-two (32) units, to wit:

Applicant shall pay at the time of building permit issuance the full amount of the following fees in the amount in effect at the time of payment:

- Building Permit
- Electrical Permit
- Plumbing Permit
- Mechanical Permit
- Plan Check Fee
- Sewer Plant Investment Fee (Metropolitan Wastewater Reclamation District)

Applicant shall pay proportionately applicable fees (based on the AMI percentage for the applicable unit) at the time of building permit issuance for the following fees in the amount in effect at the time of payment:

- Water Plant Investment Fees

Applicant shall not be required to pay the following fees or dedications:

- Use Tax
- Neighborhood Park Impact Fees
- Community Park Impact Fees
- Crossing Fees
- Drainage Fees
- Traffic Impact Fees
- Public Park Land Dedication or fee-in-lieu
- Open Space Land Dedication or fee-in-lieu

- School Land Dedication or fee-in-lieu
- Capital Facility Foundation Fees
- Private on-site open space dedication

WHEREAS, the Applicant has represented and promised that all of the units in the Project will be affordable, 30% AMI for all 16 new units and the same shall be applied to the proportionate application of fees as set forth above; and

WHEREAS, the City Council hereby finds and determines that the Application meets the requirements of Section 3-5-50 of the *Brighton Municipal Code,* that good and sufficient cause exists to reduce and/or subsidize certain development impact fees and use tax the Project, that the Applicant and the City shall enter into a written agreement as required in Section 3-5-70 of the *Code,* and the City Council is relying upon the AMI unit allocations as represented by the Applicant in making its determination regarding said reduction and/or subsidy of fees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

1. **That the following reduction or subsidy of development impact fees and use tax for Duplex Residential Assistance Demonstration Conversion Project are hereby approved, subject to final execution of an Agreement between the City and the Applicant as required in Section 3-5-70 of the *Brighton Municipal Code:***

   Applicant shall pay at the time of building permit issuance the full amount of the following fees in the amount in effect at the time of payment:

   - Building Permit
   - Electrical Permit
   - Plumbing Permit
   - Mechanical Permit
   - Plan Check Fee
   - Sewer Plant Investment Fee (Metropolitan Wastewater Reclamation District)

   Applicant shall pay proportionately applicable fees at the time of building permit issuance for the following fees in the amount in effect at the time of payment:

   - Water Plant Investment Fees

   Applicant shall not be required to pay the following fees or dedications:

   - Use Tax
   - Neighborhood Park Impact Fees
   - Community Park Impact Fees
   - Crossing Fees
   - Drainage Impact Fees
   - Traffic Impact Fees

- Public Park Land Dedication or fee-in-lieu
- Open Space Land Dedication or fee-in-lieu
- School Land Dedication or fee-in-lieu
- Capital Facility Foundation Fees
- Private on-site open space dedication

RESOLVED THIS 4TH DAY OF APRIL, 2017.

CITY OF BRIGHTON, COLORADO

_____

Richard N. McLean, Mayor

ATTEST:

_____

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____

Margaret R. Brubaker, Esq.
City Attorney